IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.Rev.Pet.No. 841 of 2007()

C.C. NO. 315 OF 2006 OF J.F.C.M.-II, PATHANAMTHITTA
CRL.A. NO. 315 OF 2006 OF SESSIONS COURT, PATHANAMTHITTA

REVN. PETITIONER:

RAJU, CONVICT NO. 5390,
CENTRAL PRISON, VIYYUR

BY ADV. SRI.P.V.VIJAYAKUMAR(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 841 of 2007

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Dated: 11-10-2007

O R D E R

In this revision preferred from the Central Prison, Viyyur, the revision petitioner who was the accused in C.C. 155 of 2005 on the file of the J.F.C.M-II, Pathanamthitta for offences punishable under Sections 454, 461 and 380 I.P.C., challenges the conviction entered and the sentence passed against him concurrently by the courts below.

2. The case of the prosecution can be summarised as follows:-

On 11-5-2001 at 7.30 a.m. P.Ws 1 and 2 who are mother and daughter respectively went out of their house to offer prayers in the Church at Karukachal after locking the house. During their absence, on the same day at 10.a.m. the accused criminally trespassed into the said house by removing the roof tiles and committed theft of gold ornaments weighing 11.25 sovereigns from a steel almirah which was broke open by using a chopper. He also committed theft of gold ornaments kept in another almirah and weighing 3.25 sovereigns. The gold ornaments were costing Rs. 58,500/- in all.

3. On the side of the prosecution 10 witnesses were examined as P.Ws 1 to 10 and 10 documents were marked as Ext.P1 to P10 and 9 material objects were got marked as MOs 1 to 3 series.

4. After the close of the prosecution evidence, the accused was questioned under Section 313 (1) Cr.P.C. with regard to the incriminating circumstances appearing against HIM in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. The learned Magistrate , after trial, as per judgment dated 19-4-2006 found the revision petitioner guilty of the offences charged against him and sentenced him to undergo rigorous imprisonment for one year for each of the offences and to pay a fine of Rs. 5,000/- for the offence punishable under Section 380 I.P.C. and on default to pay the fine to suffer rigorous imprisonment for six months.

6. On appeal preferred by the revision petitioner as Crl. Appeal No. 315 of 2006 (Jail Appeal) before the Sessions Judge, Pathanamthitta, as per judgment dated 29-9-2006 the said appeal was dismissed confirming the conviction entered and sentence passed against him. Hence this Revision.

7. I heard Advocate Sri. P.V. Vijayakumar, the learned counsel appearing for the revision petitioner on State Brief and

Advocate Sri.K.S. Sivakumar, the learned Public Prosecutor. Eventhough the learned counsel for the petitioner assailed the conviction recorded against the revision petitioner, in as much as the same has been entered after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loathe to interfere with the said conviction, which is accordingly confirmed.

8. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. It has been found by both the courts that he is a habitual offender and that justifies the sentence of rigorous imprisonment for one year for each of the offences. The courts below, however, directed that the sentence of imprisonment shall run consecutively. The learned counsel for the revision petitioner submitted that he is already undergoing imprisonment for 9 years for the conviction in another case and if the sentence of imprisonment imposed in the present case is also to run consecutively, the major part of his life will be in prison. He was aged 35 on the date of occurrence. The sentence to be imposed in a case should be commensurate with the gravity of the offence and the court is not entitled to take into account the antecedents of the accused and impose consecutive sentence unless the court proceeds to framing charge against the accused for previous

convictions in accordance with law and then press into service Sec. 75 I.P.C. No such procedure was followed by the trial court or by the appellate court. hence, I do not find any justification for the direction that the substantive sentence shall run consecutively. The said direction is dislodged and instead the substantive sentence of the revision petitioner shall run concurrently. I am not interfering with the sentence of fine imposed by the courts below.

In the result, this revision is disposed of confirming the conviction but modifying the mode of enjoying the substantive sentence as indicated above.

V. RAMKUMAR,
(JUDGE)

V. RAMKUMAR, J.

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Dated: 11-10-2007

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